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UNITED PARCEL SERVICE, INC., UPS GROUND  
FREIGHT, INC., and OVERNITE CORPORATION

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

JAIME CASTRO and REYES  
ALVAREZ as individuals and on  
behalf of all other similarly situated,

Plaintiffs,

vs.

UPS GROUND FREIGHT, INC., a  
corporation; UNITED PARCEL  
SERVICE, INC., a corporation;  
OVERNITE CORP., a corporation;  
and DOES 1 through 20, inclusive,

Defendants.

Case No. CV 08-4898 ODW (CWx)

**JOINT RULE 26(f) REPORT**

Date: September 22, 2008  
Time: 1:30 p.m.  
Crm: 11

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1 Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and  
2 Local Rule 26-1, Plaintiffs Jaime Castro and Reyes Alvarez (“Plaintiffs”) and  
3 Defendants UPS Ground Freight, Inc., United Parcel Service, Inc., and Overnite  
4 Corporation (“Defendants”) hereby submit the following joint report.

5 I. SHORT SYNOPSIS OF PRINCIPAL ISSUES

6 Plaintiffs, two former less-than-truckload (“LTL”) employees of  
7 Defendants, seek to represent, at this time, two classes of all non-union, LTL  
8 employees employed in the State of California between June 23, 2004 and the  
9 present.

10 Plaintiffs allege that Defendants on a uniform and automated basis cut  
11 a ½ hour of time from employees’ time worked for each shift of 6 or more hours.  
12 Based on Defendants removal papers, the amount of cut time sought by Plaintiffs,  
13 exclusive of penalties, exceeds \$5 million.

14 Plaintiffs further allege a policy of providing vacation benefits,  
15 including paid time off treated as vacation, which was forfeited if unused and not  
16 paid at termination.

17 Plaintiffs presently allege four causes of action on behalf of the alleged  
18 classes: (1) violation of California Labor Code Section 201-204 for failure to pay  
19 final regular time wages owed in a timely fashion at the end of employment due to  
20 a practice of systematically and improperly deducting/editing time worked from the  
21 time employees actually worked and due to a practice of systematically and  
22 improperly failing to pay all vested vacation wages, including certain paid time off  
23 benefits treated as vacation wages, at the end of employment; (2) violation of  
24 California Labor Code Section 227.3; (3) violation of California Labor Code  
25 Section 226 based on an alleged failure to keep accurate payroll and time records  
26 for the putative class members relating to the improper cutting/editing of time and  
27 failure to pay vacation wages properly; and (4) violation of California Business &  
28

1 Professions Code Section 17200 predicated on the alleged wrongful conduct  
2 asserted in the first three causes of action.

3 Plaintiffs note that, as discovery has just commenced, they would  
4 reserve the right to amend the complaint to add additional causes of action and/or to  
5 amend the class definitions and/or to add additional class representatives.

6 In connection with these claims, Plaintiffs seek an order certifying the  
7 proposed classes, consequential damages, wages allegedly owed, waiting time  
8 penalties pursuant to California Labor Code Section 226, costs, interest, and  
9 attorneys' fees, as well as restitution of funds and an injunction prohibiting the  
10 alleged unfair business practices.

11 Defendants deny these allegations and maintain that, as a preliminary  
12 matter, class certification is inappropriate because, *inter alia*, the issues presented  
13 do not present common questions of law and fact, but to the contrary, individual  
14 issues predominate (*e.g.*, whether individual employees did or did not take meal  
15 periods that are or are not reflected in company time records). Defendants  
16 understand that pursuant to paragraph 19 of the Complaint, the class Plaintiffs seek  
17 to represent consists of non-linehaul LTL drivers, as it "specifically excludes all  
18 'linehaul' truck drivers of Defendants." Defendants further contend that they:  
19 (1) made no illegal deductions from the putative class members' wages, (2) that the  
20 putative class members were paid in full for all regular wages owed; (3) that all  
21 accrued vacation days were paid out upon termination of employment as required  
22 by California law; (4) that the records kept were in compliance with the  
23 requirements of the California Labor Code; and (5) that they have not engaged in  
24 any conduct that would constitute a violation of the California Business &  
25 Professions Code.

## 26 II. DISCOVERY PLAN

27 The parties recommend that the discussion of whether a discovery plan  
28 is necessary be deferred (rather than waived) until after they have conducted a

1 private mediation, which they have scheduled for December 15, 2008, with David  
2 Rotman, a mediator with substantial experience with wage and hour class actions.

3 However, to the extent that this Court is not inclined to defer the  
4 setting of a discovery plan, the parties' position at this time is that the parties be  
5 allowed to conduct discovery focused on class certification issues until a class has  
6 been certified or not. After the class certification ruling, then the parties may  
7 engage in damages discovery and all merits discovery necessary for trial and/or  
8 dispositive motions.

9 A. Initial Disclosures

10 The parties agree to make initial, informal disclosures by October 6,  
11 2008, so that the parties can have a meaningful mediation on December 15, 2008.

12 B. Informal Exchanges of Data/Information Pre-Mediation

13 The parties have agreed to exchange information that will allow for a  
14 meaningful mediation on December 15, 2008. Though this is not an all-inclusive  
15 list, the information will encompass the following subjects:

- 16 1. Size of the putative class;
- 17 2. Named Plaintiffs' payroll records;
- 18 3. Named Plaintiffs' records of hours worked;
- 19 4. Sampling of putative class member payroll records;
- 20 5. Sampling of putative class member data regarding hours worked  
21 including all edits to time worked and a sampling of paper  
records;
- 22 6. Defendants' employee handbooks;
- 23 7. Defendants' policies, procedures, and practices regarding paid  
24 time off for putative class members;
- 25 8. Defendants' policies, procedures, and practices regarding  
26 recording of time worked and editing/cutting/deducting of time  
worked for putative class members;
- 27 9. Defendants' policies, procedures, and practices regarding meal  
28 periods for putative class members;

10. Any and all notes, records or other documents in Plaintiffs' possession, custody, or control that reflect their hours worked, meal periods, vacation entitlements, or vacation usage;
11. Any and all notes, records or other documents in Plaintiffs' possession, custody, or control that reflect communications from Defendants (or any of them) or Motor Cargo regarding recording time worked, meal periods, automatic deductions from their hours worked, or vacation or paid time off entitlements;
12. Any and all pay stubs Plaintiffs received from Defendants (or any of them) or a sampling of those pay stubs;
13. Any and all notes, records or other documents in Plaintiffs' possession, custody, or control that document, reflect, or explain any alleged shortage of pay for the final pay period; and
14. Any and all notes, records or other documents in Plaintiffs' possession, custody, or control that reflect Plaintiffs' final pay upon termination by Defendants (or any of them).

If the case is not resolved in mediation, the parties will further meet and confer and determine a detailed discovery plan, which will include depositions and additional written discovery.

Plaintiffs reserve the right to seek the depositions of Defendants' Persons Most Knowledgeable prior to or after the mediation. Plaintiffs do not believe a discovery plan is necessary given the facts of this case. Plaintiffs believe that focused discovery, including depositions (both percipient and PMK depositions) will assist in narrowing the issues and moving this case forward towards class certification.

Defendants likewise reserve the right to take depositions, including the named Plaintiffs' depositions, or portions of those depositions, prior to or after the mediation.

#### C. Discovery Cut-Off

In light of the parties' agreement to proceed with a private mediation, the parties submit that it is premature to set a discovery cut-off and propose that this issue be deferred until a post-mediation status conference. The parties respectfully

1 request that the court set a post-mediation status conference for January 2009 so  
2 that relevant dates may be set in the event the parties' mediation is unsuccessful.

3 D. Expert Witnesses

4 The parties agree that expert witness information be disclosed in  
5 accordance with Rule 26(a)(2)(C) of the Federal Rules of Civil Procedure.

6 E. Phasing of Discovery

7 In light of the parties' agreement to proceed with a private mediation,  
8 the parties submit that it is premature to address the phasing of formal discovery  
9 and propose that this issue be deferred until a post-mediation status conference.

10 However, to the extent that this Court is not inclined to defer the  
11 setting of a discovery plan, the parties' position at this time is that they be allowed  
12 to conduct discovery focused on class certification issues until a class has been  
13 certified or not. After the class certification ruling, the parties will then engage in  
14 damages discovery and all merits discovery necessary for trial and/or dispositive  
15 motions.

16 F. Electronically Stored Information

17 The parties do not presently anticipate any issues regarding  
18 electronically stored information ("ESI"). The parties will meet and confer as they  
19 exchange information and take discovery in order to resolve any issues pertaining  
20 to ESI that may arise.

21 G. Privilege and Work Product

22 The parties agree to provide a privilege log for any documents  
23 requested during formal discovery that the responding party maintains is protected  
24 by attorney client privilege or work product privilege. The parties agree that they  
25 need not log attorney notes, internal communications among counsel in this  
26 litigation, and correspondence between counsel in this litigation and their respective  
27 clients.  
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1 H. Changes to Federal Rules

2 Plaintiffs do not believe at this time that there needs to be any changes  
3 to the discovery limits set forth in the federal rules. Defendants believe that some  
4 changes to the discovery limits set forth in the federal rules may be necessary due to  
5 the complexity of this class action lawsuit. However, Defendants believe that in  
6 light of the parties' agreement to proceed with a private mediation, it is premature  
7 to address this matter.

8 III. COMPLEX CASE

9 Plaintiffs do not believe that this is a case that should be deemed a  
10 complex case.

11 Defendants believe that this class action lawsuit may need to be  
12 deemed a complex case, but believe that this determination is premature.  
13 Defendants request that this matter be addressed after the parties engage in private  
14 mediation, should the mediation fail to resolve the matter.

15 IV. LAW AND MOTION LISTING/SCHEDULE/CLASS CERTIFICATION

16 The parties anticipate that, should the planned mediation prove  
17 unsuccessful, motion(s) concerning class certification and summary judgment will  
18 be necessary to resolve issues of whether class certification is appropriate and/or  
19 whether liability can be decided as a matter of law. Defendants reserve the right to  
20 bring a motion for separate trials, should class certification be denied, and a motion  
21 for bifurcation of the trial into liability and damages phases. The parties reserve  
22 their rights to file other motions regarding severance, bifurcation or other ordering  
23 of proof as the case develops. In light of the parties' agreement to proceed with a  
24 private mediation, the parties respectfully submit that it is premature to schedule  
25 any motions at this time.

26 The parties further suggest that should the mediation in December  
27 2008 not be successful, that a deadline to file a motion for class certification be set  
28 for on or about October 2009.



1 V. SETTLEMENT/SETTLEMENT PROCEDURE

2 The parties have not yet had any formal settlement discussions, but  
3 have conferred and agreed to conduct a private mediation, set to occur on  
4 December 15, 2008, following sufficient informal exchange of information. The  
5 parties have conferred about appropriate types of information to exchange in order  
6 to be adequately informed for a meaningful mediation.

7 VI. TRIAL ESTIMATE/TRIAL DATE

8 In light of the parties' agreement to proceed with a private mediation  
9 on December 15, 2008, the parties submit that it is premature to provide a trial  
10 estimate. The length of the trial in this matter will directly depend on whether a  
11 class is certified or not.

12 The parties suggest that a trial date not be selected until after the  
13 Court's ruling on Plaintiffs' motion for class certification.

14 VII. ADDITIONAL PARTIES/AMENDMENT OF PLEADINGS

15 Plaintiffs would reserve the right to amend the complaint to add  
16 additional causes of action and/or to amend the class definitions and/or to add  
17 additional class representatives and/or additional defendants. Plaintiffs request that  
18 in light of the parties' agreement to proceed with private mediation that there  
19 should be no deadline or cut-off for amending the complaint.

20 Defendants believe that amendments to the pleadings should be  
21 evaluated pursuant to the Federal Rules of Civil Procedure.

22 VIII. TRIAL BY JURY/TRIAL BY COURT

23 Plaintiffs have requested a trial by jury. Defendant reserves the right  
24 to request trial by the Court of any equitable issues (such as Plaintiffs' cause of  
25 action pled under Business & Professions Code Section 17200 and/or equitable  
26 defenses such as unjust enrichment or the doctrine of unclean hands).

IX. ISSUES AFFECTING THE STATUS OR MANAGEMENT OF THE  
CASE: CLASS CERTIFICATION

The parties agree that the issue of whether a class (or classes) will be certified affect the management of this case, as well as the appropriate length of time for discovery, the type of discovery needed, and the time necessary to prepare the matter for trial.

X. SEVERANCE, BIFURCATION, ORDER OF PROOF

The parties believe it is premature at this point to make proposals regarding severance, bifurcation or order of proof. Once the parties know whether the case will proceed as a class action or on behalf of the named Plaintiffs only, they can make recommendations to the Court about conducting the trial.

DATED: Sept. 8, 2008

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By: /s/ Peter M. Hart  
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Attorneys for Plaintiffs  
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DATED: Sept. 8, 2008

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